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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,380	06/23/2005	Isador H Lieberman	CCF-6389PCT2/US	2534
26294 7590 01/22/2008 TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 1300 EAST NINTH STREET, SUITE 1700 CLEVEVLAND, OH 44114			EXAMINER WOODALL, NICHOLAS W	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 01/22/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/540,380

Applicant(s)

LIEBERMAN, ISADOR H

Examiner

Nicholas Woodall

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 8-11 and 18-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-11 and 18-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/13/2007 has been entered.

Allowable Subject Matter

2. The indicated allowability of claims 21 and 24-28 is withdrawn in view of the newly discovered reference(s) to Dee, Hammerslag, Hecke, Spirer, and Kuslich. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 20, 21, and 23-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 20 recites the limitation "tubular member" in line 13. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 23 recites the limitation "tubular member" in line 18. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 24 recites the limitation "means for articulating said head section" in line 2.

There is insufficient antecedent basis for this limitation in the claim.

8. Claim 27 recites the limitation "tubular member" in line 4. There is insufficient antecedent basis for this limitation in the claim. The examiner recommends the applicant review the claims for any additional 35 U.S.C. 112 2nd paragraph informalities.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

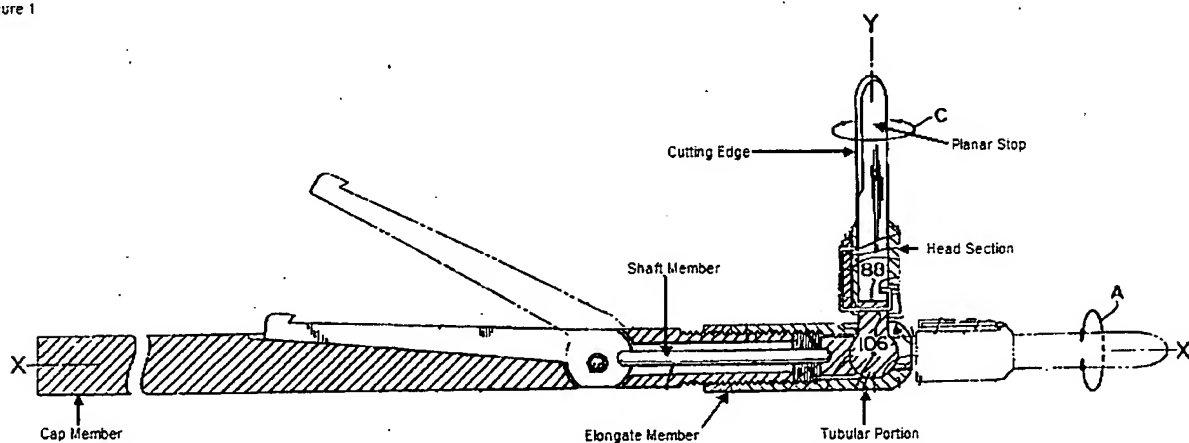
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-3, 8-10, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dee (U.S. Patent 4,788,976) in view of Minor (U.S. Patent 6,309,403).

Regarding claims 1, 8, and 22, Dee discloses a device comprising an elongate member (see Figure 1 below). The elongate member includes a tubular portion extending between a proximal end portion and a distal end portion. The distal end portion includes a head section capable of being articulated between a plurality of predetermined angular positions about a pivot axis extending transverse to the central axis of the elongate member, wherein the head section includes at least one planar stop surface and a cutting edge projecting from and being integrally formed with the at least one planar stop surface. Regarding claims 2 and 9, Dee discloses a device further comprising a shaft member connected to the head section and extending coaxially

within the tubular portion, wherein the shaft member and the head section are capable of moving longitudinally relative to the tubular portion. Regarding claims 3 and 10, Dee discloses a device wherein the shaft member includes a terminal end portion that projects beyond the proximal end of the elongate member. Dee fails to disclose the device further comprising a mechanism capable of pivoting the head section relative to the tubular portion. Minor teaches a device further comprising a mechanism for pivoting the head section of the device relative to a tubular section of the device in order to properly position the device during a minimally invasive surgical procedure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Dee further comprising a mechanism capable of pivoting the head section relative to the tubular portion in view of Minor in order to properly position the device during a minimally invasive surgical procedure.

Figure 1



11. Claims 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dee (U.S. Patent 4,788,976) in view of Minor (U.S. Patent 6,309,403) further in view of Spirer (U.S. Patent 5,871,204).

Regarding claims 20 and 23, the combination of Dee and Minor disclose a device wherein head section further includes a ratchet wheel having a first set of ratchet teeth and the distal end of the shaft member includes a second set of ratchet teeth complementary to the first set of ratchet teeth in order to lock the angular position of the head section of the device (Dee column 5 lines 1-19). Spirer teaches a device comprising a tubular portion and a head section wherein the head section includes a ratchet wheel having a first set of ratchet teeth and the distal end of the tubular portion having a complementary second set of ratchet teeth in order to lock the angular position of the head section of the device. Because both the combination of Dee and Minor and Spirer teach a head section comprising a ratchet wheel having a first set of ratchet teeth and a second member having a complimentary second set of ratchet teeth, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one for the other in order to achieve the predictable result of locking the angular position of the head section of the device.

12. Claims 21, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dee (U.S. Patent 4,788,976) in view of Minor (U.S. Patent 6,309,403) further in view of Spirer (U.S. Patent 5,871,204) further in view of Hammerslag (U.S. Patent 5,372,587).

Regarding claim 25, the combination of Dee, Minor, and Spirer disclose a device comprising a shaft member connected to the head section and extending coaxially within the tubular portion, wherein the shaft member and the head section are capable of moving axially relative to the tubular portion to permit engagement and disengagement of the first and second sets of ratchet teeth. Regarding claims 21 and 24, the combination of Dee, Minor, and Spirer discloses a device comprising a mechanism for pivoting the head section relative to the tubular portion as discussed above. The mechanism comprising two wires operatively coupled to a ratchet wheel at the first end and extending through a tubular member and being attached to an actuator at the second end (Minor column 3 lines 14-25). The combination of Dee, Minor, and Spirer fail to disclose a mechanism for pivoting the head section relative to the tubular portion comprising one wire operatively coupled to a pivoting member, i.e. a ratchet wheel, wherein the first and second ends of the wire extending into the tubular portion and are attached to first and second levers disposed in the distal end portion of the elongate member. Hammerslag teaches a device comprising a mechanism for pivoting the head section of a device relative to a tubular portion of the device comprising a single wire operatively coupled to a pivoting member (175), wherein the first and second ends (170) extend into the tubular portion and are attached to first and second switches, i.e. levers, disposed in the proximal end portion of the elongate member (Hammerslag column 9 lines 39-54). The switches are capable of being manually engaged and moved axially relative to each other to cause rotation of the head section about the pivot axis. Because both the combination of Dee, Minor, and Spirer and Hammerslag teach

devices comprising a mechanism for pivoting the head section of a device relative to a tubular portion, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one for the other in order to achieve the predictable result of pivoting the head section relative to a tubular portion of the device.

13. Claims 4, 11, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dee (U.S. Patent 4,788,976) in view of Minor (U.S. Patent 6,309,403) further in view of Spirer (U.S. Patent 5,871,204) further in view of Hammerslag (U.S. Patent 5,372,587) further in view of Heckeke (U.S. Patent 6,830,574).

Regarding claims 4, 11, 26-28, the combination of Dee, Minor, Spirer, and Hammerslag disclose a device further comprising a cap member. The combination of Dee, Minor, Spirer, and Hammerslag disclose a device comprising a locking mechanism for locking the angular position of the head section relative to the tubular portion including a lever and the shaft member, wherein the lever and the shaft member releasably lock the angular position of the head section relative to the tubular portion. The combination of Dee, Minor, Spirer, and Hammerslag fail to disclose a locking mechanism wherein the shaft member is removably attachable to the cap member, wherein the shaft member and the cap member releasably lock the angular position of the head section relative to the tubular portion and the shaft member including a threaded end portion projecting beyond the proximal end portion of the elongate member. Heckeke teaches a device comprising a locking mechanism for locking the angular position of a head portion relative to a tubular portion, wherein the locking mechanism includes a shaft member removably attached to a cap member, wherein the

shaft member and the cap member releasably lock the angular position of the head section relative to the tubular portion of the device. Kuslich teaches a device comprising a shaft member and a cap member, wherein the shaft member includes a threaded portion extending beyond the proximal end portion of an elongate member in order to couple the shaft member to the end cap. Because both the combination of Dee, Minor, Spirer, and Hammerslag and Hecke teach device comprising locking mechanisms, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one for the other in order to achieve the predictable results of locking the angular position of the head section relative to the tubular portion of the device and it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the combination of Dee, Minor, Spirer, and Hammerslag wherein the shaft member further includes a threaded portion projecting beyond the proximal end portion of the elongate member in view of Kuslich in order to couple the shaft member to the end cap.

Response to Arguments

14. Applicant's arguments with respect to claims 1-4, 8-11, and 18-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

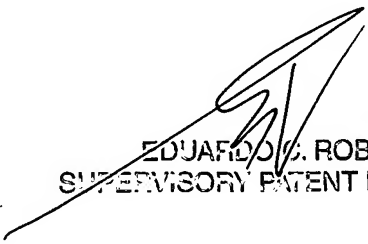
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW



EDUARDO G. ROBERT
SUPERVISORY PATENT EXAMINER